IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No 1683 of 1994
WITH
CRIMINAL MISC. APPLICATION NO.1681 OF 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

KESARISINH MOJISINH YADAV

Versus

SHANTABEN WIFE OF BHIMSINH AMARSINH VASAVA

Appearance:

MR KJ SHETHNA for Petitioners
MR GIRISH PATEL for Respondent No. 1
SERVED for Respondent No. 2
MR SA PANDYA A.P.P. for Respondent No. 3

CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 04/07/97

ORAL JUDGEMENT

In both these matters the parties are represented by same advocates and the dispute being between almost the same parties involving identical question of law, are

disposed of by this common judgment. Before dwelling upon merits of rival contentions, it would be worthwhile to narrate the background and the facts giving rise to these matters.

2. In both these matters one Mr.Chhotusinh Amarsinh Vasava, a tribal leader, social worker and sitting M.L.A. has been impleaded as respondent No.2 alleging mala fides and political vendetta though he is not a party to the original complainants. Strictly speaking, though respondent No.2 Mr.Chhotusinh Amarsinh Vasava is not a party to the original complaints, however, in the peculiar facts and background can be treated as complainant since the complainants are none else but are close relatives and persons of acquaintance. Despite direct allegations of mala fides and political vendetta, none of the respondents, namely, either respondent No.1 the complainant or respondent No.2 Chhotusinh Amarsinh Vasava, has filed any affidavit-in-reply refuting the allegations. The majority of petitioners are members of police force and have made allegations against respondent No.2 as being instrumentality for filing these complaints alleging that he being a headstrong person, the entire area was victim of his terrorist activities and people were living under terror of crimes by respondent No.2 and his associates. As the petitioners, some of whom are highly ranked police officers, honestly tried to restore peace, law and order and curb such nefarious activities, the interest of respondent No.2 was adversely affected therefore getting furious tried to demoralise the police force by dragging them into malicious prosecution with ulterior motive for wreaking vengeance political vendetta with a view to spite him owing to private and personal grudge hence criminal cases are initiated. In this bankground now I am narrating the facts of individual case.

FACTS OF CASE NO.1683 OF 1994

In this case, private complaint No.34 of 1993 was filed by one Shantaben wife of Bhimsinh Vasava in the Court of the Judicial Magistrate, First Class at Jhagadia. She is none else but the brother's wife of respondent No.2 Chhotusinh Amarsinh Vasava. Petitioner No.1 is Police Sub Inspector whereas petitioner No.2 is Assistant Superintendent of Police; petitioners Nos.3, 4 and 5 as private parties, petitioner No.6 is described as Assistant Inspector General of Police (sic) District Superintendent of Police and petitioner No.7 as Deputy Superintendent of Police. They are original accused. It

is alleged that at about 12 in the noon on 28th May 1993, the petitioners visited residence of the complainant and without any cause or provocation first severely assaulted her husband Bhimsinh Vasava. As the complainant tried to intervene, she was also assaulted with the help of gun; that one maid servant Revaben was also assaulted by petitioner No.2. In the meanwhile, as her niece Kapilaben appeared at the scene of offence she was dragged, beaten and assaulted. Similarly, as alleged, petitioners Nos.3 and 4 - the accused also tried to commit offence of rape on complainant's daughter Ilaben in presence of all including superior officers. Some allegations about ransacking household articles are also made. It is also stated that, between 28th May 1993 to 1st June 1993, the complainant as well as her witnesses were wrongfully confined by the petitioners. In this background, the complaint was filed under Sections 120-B, 143, 147, 149, 342, 343, 447, 376, 398, 506 of the Indian Penal Code, 1860 (the IPC for brief) read with the provisions under the Atrocities Act. The court instead of issuing summons decided to hold inquiry under Section 202 of the Code of Criminal Procedure (the Cr.PC for brief) and examined the complainant as well as witnesses and ultimately vide order dated 30th March 1994 taking cognizance of offences under various sections ordered to issue non-bailable warrant. Aggrieved by this order, the petitioners have filed this petition under section 482 of the Cr.PC. for quashing the complaint as well as the process. In the complaint respondent No.1 complainant has categorically alleged that the petitioners - accused deliberately involved themselves with a view to ruin, tarnish and malign the political career of respondent No.2, namely, Chhotusinh Amarsinh Vasava, a social and tribal leader and sitting M.L.A.

FACTS OF CASE NO.1681 OF 1994

In this case, the complainant Savitaben is also a tribal lady and is closely associated with the family of respondent No.2 Chhotusinh Amarsinh Vasava the tribal leader and sitting M.L.A. She filed private complaint No.39 of 1993 in the court of the Judicial Magistrate, First Class at Jhagadia on 16.6.1993 against following persons for commission of offence punishable under Section 302 read with Section 114 of the I.P.C. and the Atrocities Act.

1 District Superintendent of Police Mr.Tirthraj (Cognizance not taken)

2 Police Sub Inspector Mr.Yadav (Cognizance taken)

3 Sanjaybhai Rameshbhai (")

4 Rusmatbhai Shakurbhai Pathan (")

5 Police Inspector Mr.Desai.(Cognizance not taken)

In this case, at the initial stage, instead of taking cognizance, the court below decided to hold inquiry under Section 202 of the Cr.PC and after holding inquiry, took cognizance against the present petitioners, namely, accused Nos. 2, 3 and 4 respectively for the offences punishable under Section 302 read with Section 114 of the I.P.C. and Sections 3 and 4 of the Atrocities Act and issued non-bailable warrants against them. It would be pertinent to note that, in this case also, the occurrence is shown as on 28th May 1993 between 3 to 4 p.m. involving almost same persons against whom earlier complaint is filed for an incident alleged to have taken place at about 12 noon on the same day at different place at a distance, that is, village Maljipura. This incident is alleged to have been committed in the forest. Surprisingly, without making allegations for active involvement, the complainant has shown in the complaint the concerned District Superintendent of Police and the Police Sub Inspector as accused yet on facts the court did not take any cognizance and no process is issued. Cognizance is taken only against petitioner No.1 a Police Sub Inspector (accused No.2) and petitioners Nos.2 and 3 as private parties (accused No.3 & 4). Since both the incidents as alleged in separate complaints by two different persons yet are involving almost same persons, the allegations made and circumstances shown would be relevant and being inter-connected would have bearing upon each other for deciding the fate of these matters.

3. As a fundamental rule, powers under Section 482 of the Cr.PC for quashing proceedings at initial stage should be exercised very sparingly and in rare cases. Ordinarily, criminal proceedings should be allowed to see its logical end on appreciation of evidence. Therefore, any attempt to interfere under Section 482 of the Cr.PC at the initial stage would amount to scuttling the proceedings in its embryo without giving an opportunity to the parties to present their case on merits. Irrespective of this cardinal principle, if the allegations made in the F.I.R. or complaint, though prima facie constitute an offence, yet are so absurd and inherently improbable that on the basis of which no prudent person would have reached a just conclusion that

there is sufficient ground for proceeding against the accused, then in such cases continuation of criminal proceedings would be abuse of process of court, therefore, to prevent such abuse and to serve the ends of justice, the courts must without any hesitation exercise inherent powers to quash and bury the matter at the initial stage without waiting for the stage of examining evidence. Even in a case where apparently on face of record or manifestly the criminal proceedings are influenced with mala fides or appear to have been in vengeance giving vent to political vendetta or private and personal grudge, the court shall not feel helpless to quash proceedings bearing in mind the basic principle that, taking the allegations to be true on its face value and that an offence is made out and the court should not intervene and interfere. On this point, Mr.Shethna, learned Advocate for the petitioners has placed reliance upon the judgment reported in AIR 1992 Supreme Court 604 in the case of STATE OF HARYANA v. BHAJAN LAL wherein the Apex Court has laid down broad principles governing exercise of inherent powers for quashing proceedings. Of course, the guidelines are not exhaustive but are illustrative and application would depend upon facts and circumstances of individual case. In this context, a reference also deserves to be made to the binding ruling of the Supreme Court reported in AIR 1983 Supreme Court 67 in the case of MUNICIPAL CORPORATION OF DELHI v. RAM KISHAN ROHTAGI wherein identical view has been taken by the Apex Court. Since in both these cases several guidelines have been laid (being illustrative and not being exhaustive) both the learned advocates have placed reliance referring to the guideline which supports the individual case.

4. It is true that while issuing process the court has not to determine the correctness or probability or improbability of allegations and evidence on disputable grounds but should proceed on the basis of existence of prima face case on the assumption that what is stated is true. At the same time, the Apex Court has laid down a word of caution in its judgment reported in AIR 1972 Supreme Court 1607 in the case of DEBENDRA NATH v. STATE OF WEST BENGAL that prosecution shall not be continued in a case where allegations are so fantastic that they cannot reasonably be held to be true though absurdity appeared to be true and correct and constituted an offence. In that case, the Supreme Court has made following observations:

" What the Magistrate has to determine at the stage of issue of process is not the correctness

> or the probability or improbability of individual items of evidence on disputable grounds, but the existence or otherwise of a prima facie case on the assumption that what is stated can be true unless the prosecution allegations are so fantastic that they cannot reasonably be held to be true."

5. Now, in the instant case, it is true that the allegations taken at its face value and accepted as true do constitute serious offences therefore, ordinarily, proceedings shall not be scuttled in its embryo. If we look from the angle of the manner in which the complaint is couched and the details are given it appears like a story and leads to absurdity and improbability and no man of ordinary prudence can reach a conclusion about probity thereof. Broadly the allegations are that on 28th May 1993 the petitioners visited the residence of the complainant, brutally assaulted her and each of her family members including her husband, daughter, niece etc. Not only that they were assaulted but despite presence of all the petitioners as well as members of the complainant's family, some of the petitioners are alleged to have attempted to commit rape. I am asking a question to myself whether, is it ever possible? Every man of common prudence would answer in negative. The complainant has tried to implicate as many persons as possible, specially persons from rank and file of police department, namely, District Superintendent of Police, Deputy Superintendent of Police, Police Inspector, Police Sub Inspector etc. who, according to the complainant, are bent upon to ruin political career of respondent No.2 against whom as contended they have launched a crusade to curb his illegal, unlawful and militant activities. The allegations suggest that senior officers were present and were assisting commission of such heinous crime. In my humble view, nobody much less such senior officers would hold any searchlight facilitating commission of such heinous crime. On facts, I have no hesitation in saying that the allegations are absurd, improbable and are so fantastic that they cannot reasonably be held to be true. At the place of incident, the complainant and her husband's presence is shown. They are none else but the parents of the girl who is projected as a victim of circumstances for the offence of attempting to commit rape. Presence of other family members is also shown. Howsoever a person may be a criminal, yet the Indian culture is such that would not dare to commit any heinous crimes like rape etc. and others would not hold searchlight to facilitate commission of offences relating to modesty of a woman. Apart from this fact, if the

motive as alleged is accepted as true, then such act has nothing to do with the political career of the respondent No.2 Mr. Vasava, the sitting M.L.A. and the leader.

6. As regards malice, mala fides and giving vent to the personal and private grudge and political vendetta, allegations are made against respondent No.2 though he is not a party to the complaint yet, respondent No.2 has not been bold enough to come before the court and deny these allegations. This is a strong circumstance which suggests that the complaint is influenced by malice, mala fides and meant for giving vent to personal and private grudge and political vendetta. Even the complainant herself has made a reference in the complaint that the intention of the petitioners - accused for commission of such offence is to ruin the political career and maligning the image of respondent No.2 who is a sitting M.L.A. and tribal political leader. As regards implication of private parties, personal and private grudge can be seen on the face of complaints wherein allegations about past enmity political vendetta have been made.

7. While making allegations in the complaint, the complainant has referred to the presence of the present petitioners only. While during inquiry under Section 202 of the Cr.PC she has stated that the petitioners accused came in 17 police vehicles. This allegation is so absurd, fantastic and improbable that a man of common prudence would not accept it to be true because for travelling of seven persons (the accused) seventeen vehicles are not required. Seven persons can come in only one vehicle.

8. In Criminal Case No.34 of 1993 initiated by Shantaben wife of Bhimsinh Vasava, an explanation is sought to be tendered for delay in filing the complaint. The incident is alleged to have occurred on 28th May 1993, however, the complaint came to be filed on 3rd June 1993. In para 7, delay is explained stating that between 28th May 1993 to 1st June 1993, all the family members were kept in wrongful confinement and under fear and were not permitted to move out. For the sake of argument one may accept it at its face value and accept the explanation, but then we have another matter in our hand, that is, Criminal Complaint No.39 of 1993 initiated by Savitaben wife of Nanubhai about the death of her husband Nanubhai wherein initially all the accused of other case are also implicated though cognizance is taken only against one Police Sub Inspector and two private persons under Sections 302 and 114 of the I.P.C. The incident as

narrated is of the same date and the time shown is between 3 to 4 p.m. In the earlier case the incident is shown to have occurred at 12 noon involving same persons and making allegation about wrongful confinement for three days. If that be so, how could said persons go to another place between 3 to 4 p.m.on the same day for commission of offence as alleged in the later case when their presence for three days is shown at the place of first offence for fulfilling the object of wrongful confinement. In the second case, private complaint is filed on 16th June 1993, almost after eighteen days and no satisfactory explanation has been tendered. This smells of hatching plan for false implication. In the later case, there was no question of wrongful confinement. On the contrary, presence of some independent persons has also been shown. I do not find any reason for respondent No.2 an influential tribal leader and sitting M.L.A. not to inform police at the earliest opportunity for commission of such a heinous and serious crime. This amply reflects upon mala fides, malice and personal grudge against the police officers who are determined to curb the activities of respondent No.2 to restore law and order situation. In my view, if police officers dedicated to their duties as such are subjected to such allegation for giving vent to personal grudge and political vendetta, one can say that the police officers will always try to shirk in discharging their duties honestly, sincerely and independently. In the long run, such cases may have adverse impact upon law and order situation in the society giving rise to vandalism and anti-social activities.

9. In the later case, the allegations are couched in such a way that they do appear to be true and correct at the face value but, if seen its mirror image very carefully, would appear to be fantastic and improbable. The allegations are made with regard to death of Nanubhai. The allegations are that the petitioners fired at deceased Nanubhai and killed him without any fault or provocation but in the next breath the complainant has also stated about presence of some other persons and yet she says that she had to sit in the forest with the dead-body for the whole night because the petitioners accused did not permit her to remove the dead-body. It is also alleged that while firing shot the accused were heard shouting "D.S.P. has instructed". According to the complaint, if the D.S.P. himself was present, why should one shout that D.S.P. has instructed. Does it not look so fantastic that nobody would treat it to be true.

10. Mr.Shethna, learned Advocate for the petitioners has also invited my attention to various offences registered against respondent No.2 the husband of the complainant in Criminal Miscellaneous Application No.1683 of 1994 and other associates of respondent No.2. A case for committing serious offences under Sections 143, 147, 149 read with Sections 302, 120-B of the I.P.C. and the Arms Act was registered against respondent No.2 and the husband of respondent No.1 in Criminal Miscellaneous Application No.1683 of 1994 for commission of offence on 27th May 1993 at about 9.30 p.m., that is, a day preceding the day referred to in the complaints involving the present petitioners for commission of offence. The said complaint is registered at C.R. No.125 of 1993 with the Police Station at Jhagadia. Similarly, an offence under Sections 143, 147, 148, 149 read with other offences has also been registered against 150 persons belonging to tribal area at C.R. No.126 of 1993 with the Jhagadia Police Station. The date of offence is shown as 28th May 1993. Another case has also been registered at C.R. No.192 of 1993 in City 'A' Division Police Station at Bharuch against the associates of respondent No.2 for commission of offence under Sections 120-B, 327, 341 and other sections. It is an admitted fact that the police officers who are implicated in the cases were investigating into these matters and were trying to nab the offenders who are also family members of complainants and respondent No.2. Under the circumstances one can safely infer that the action on the part of respondent No.1 complainant is nothing else but is with malice, mala fides so that the investigating officers may be demoralised and lay their hands off from further investigations and may not bring to light the real culprits. Thus, it appears that the incident which, in fact, had happened while discharging lawful duties is sought to be used against the petitioners by twisting facts, changing time and place, and persons involved, namely the accused. Thus, cognizance should not have been taken as would be barred under Section 197 of the Cr.PC. In one of the grounds, the petitioners have referred to this express legal bar. In the facts and circumstances of this case, I do find some substance which would fortify that it is abuse of process of court.

11. I entirely agree with Mr.Patel for the respondents and the legal position is well-settled that when prosecution is asked to be quashed at the initial stage, the test to be applied by court is whether the uncontroverted allegations as made prima facie establish the offence or not. However, it is for the court to take into consideration any special features which appear in a

particular case for considering whether it would be expedient and in the interest of justice to permit a prosecution to continue as held by the Supreme Court in the case of MADHAVRAO v. SAMBHAJIRAO reported in AIR 1988 Supreme Court 709. The Apex Court has gone to the extent by saying that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and therefore no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may take into consideration the special facts of a case and quash the proceeding even though it may be at a preliminary stage. Identical view has also been taken in the case of PUNJAB NATIONAL BANK v. SURENDRA PRASAD SINHA reported in AIR 1992 Supreme Court 1815 holding that judicial process should not be an instrument of oppression or needless harassment and in a given case the court should take all relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of private complainants as vendetta to harass the persons needlessly. The court has further held that vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but shall not be a mean to wreak personal vengeance.

12. Considering the question of quashing criminal proceedings at preliminary stage, it has been observed by the Apex Court in the case of STATE OF JAMMU & KASHMIR v. ROMESH CHANDER reported in 1997 Supreme Court Cases (Cri.) 44 that there shall not be any bar for looking into relevant law and allegations made in the complaint at prima facie stage. In the case of RUPAN DEOL BAJAJ v. K.P.S.GILL reported in AIR 1996 Supreme Court 309, the Supreme Court has also held that, while considering the question of quashing, the allegations had to be viewed in context of past events. In this case, past events and the allegations made in both the complaints taken at their face value and collectively paint a very clear picture about absurdity, improbability, fantasy, mala fides, malice ventilating private and personal grudge.

13. Mr.Patel for the respondents has fairly considered that both the incidents have common background. Hence, this court has no hesitation in holding that, as allegations are interwoven, have to be considered collectively and jointly and not in isolation with each other. Justifying issuance of process Mr.Patel for the respondents has vehemently argued that in an inquiry under Section 202 of the Cr.P.C. the court is not called upon to appreciate evidence but to see it at

its face value and if accepted as true and uncontroverted and if constitutes an offence, machinery of criminal justice must be put into motion and shall not be scuttled. Mr.Patel has placed reliance upon the judgment in the case of NAGAWWA v. VEERANNA reported in AIR 1976 Supreme Court 1947 wherein reliance has also been placed upon AIR 1963 SC 1430 in the case of Chandra Deo v. Prokash Chandra. It is true that, at the stage of holding inquiry under Section 202 of the Cr.P.C., the court is not called upon to appreciate evidence but, at the same time, the court is expected to apply mind as a man of common prudence about the nature of allegations made, background under which are made and if leads to absurdity or improbability, the court must refrain from exercising discretion so as to prevent abuse of process and needless harassment.

14. It is true that a mere fact that complainant is guilty of mala fides shall not be a ground for quashing prosecution as held in AIR 1996 Supreme Court 722 in the case of STATE OF MAHARASHTRA v. I.P.KALPATRI. But, in my view, there is no express bar in treating it as one of the grounds along with others in exercising inherent powers in light of principles laid down by the Supreme Court in various judgments discussed hereinabove.

15. For the sake of repetition I say that powers conferred under Section 482 of the Cr.P.C. should be exercised very sparingly and cautiously quashing criminal proceedings at the very initial stage as held by the Supreme court in the case of STATE OF BIHAR v. RAJENDRA AGRAWALLA reported in 1996 (8) Supreme Court Cases 164. But, at the same time, court cannot be a mute and silent spectator and permit perpetuation of abuse of process and allowing the court to be a mere instrumentality in the hands of private complainants if other circumstances do warrant exercise of such powers.

16. For the reasons stated above, in my view, continuation of proceedings would be in gross abuse of process causing needless harassment to the police personnel who are wedded for discharging their duties honestly and sincerely for maintenance of law and order. In the facts and circumstances of the case, it is necessary to interfere at this stage and quash the proceedings to prevent abuse of process as it is a deliberate attempt to demoralise and succumb to anti-social and headstrong persons working under the garb of social and political leader.

17. In the result, both these petitions are allowed.

Criminal Inquiry Nos.34 of 1993 and 39 of 1993 pending in the Court of the Judicial Magistrate, First Class at Jhagadia and the process (non-bailable warrants) issued therein are quashed and set aside. Rule made absolute accordingly.

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